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June 15, 2011

VIA ELECTRONIC MAIL

U.S. Customs and Border Protection
FOIA Division
799 9th Street, NW, Mint Annex
Washington, DC 20229-1181
CBPFOIA@dhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The American Immigration Council (AIC) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*

Request for Information

AIC requests disclosure of any and all records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)² that describe, refer or relate to CBP's enforcement operations and activities within 100 miles of the U.S.-Mexico border aimed at and/or resulting in voluntary returns of individuals to their countries of origin from January 2009 to the present. For purposes of this request, the term "voluntary returns" shall encompass grants of voluntary departure prior to the initiation of removal proceedings pursuant to 8 U.S.C. § 1229c(a).

The requested records include, but are not limited to, those describing, referring or relating to:

- (1) How DHS and/or CBP agents decide to stop, arrest and/or detain individuals believed to be present in the United States in violation of the immigration laws.
- (2) Guidance, guidelines, directives, rules, policies, procedures or other documents that address questioning of individuals apprehended by DHS and/or CBP agents.

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

² The term "CBP" as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

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- (3) Criteria or other standards used by DHS and/or CBP agents to determine whether individuals they have apprehended are eligible for voluntary return;
- (4) Guidance, guidelines, directives, rules, policies, procedures or other documents that address means of determining that individuals apprehended by DHS and/or CBP agents knowingly and voluntarily consent to voluntary return and knowingly and voluntarily waive their right to a hearing before an immigration judge and/or to any immigration relief for which they may be eligible.
- (5) Guidance, guidelines, directives, rules, policies, procedures, instructions, memoranda or other documents regarding an agent's use of coercive tactics, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (6) Any other guidance, guidelines, directives, rules, policies, procedures or other documents that address processing of individuals apprehended by CBP for voluntary return in lieu of removal.
- (7) Guidance, guidelines, directives, rules, policies, procedures, or other documents that address means of ensuring that individuals who have signed Form I-826, Notice of Rights and Request for Disposition, depart from the United States.
- (8) Agreements, correspondence, or communications within and/or among CBP, DHS, any of their agents, agencies, sub-agencies, or offices, and/or U.S. Attorneys' Offices regarding the use of voluntary return in lieu of removal.
- (9) Training materials used to educate CBP agents about the use of voluntary return in lieu of removal.
- (10) From January 2009 to April 2011, the total number of voluntary returns of individuals to their countries of origin, the nationalities of individuals who agreed to voluntary return, and, if available, the number of voluntary returns per month.
- (11) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged misconduct by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.
- (12) Complaints, correspondence, communications, or other documents from any individual or entity regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.
- (13) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged misconduct by DHS or CBP agents within 100 miles of the

U.S.-Mexico border, including but not limited to documents relating to the alleged mistreatment of any individual while in CBP custody.

- (14) Memoranda, reports, correspondence, communications, or other documents regarding investigations undertaken by DHS, CBP, or another government agency regarding alleged use of coercive tactics by DHS or CBP agents within 100 miles of the U.S.-Mexico border, including but not limited to the actual or threatened use of violence, sexual assault, and/or retaliation against family members to persuade individuals apprehended by DHS and/or CBP to accept voluntary return.

We request that records existing in electronic format be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If any of the information requested is considered exempt under applicable law, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

Request for fee waiver

AIC requests that all fees associated with this FOIA request be waived. Under 5 U.S.C. § 552(a)(4)(A)(iii), fees may be waived where the requestor has demonstrated that (i) disclosure of the information is in the public interest in that it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requestor.

AIC, a non-profit organization, educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, promotes the just and fair administration of our immigration laws, and protects the constitutional and legal rights of noncitizens. Through research, analysis and publications, AIC's Immigration Policy Center (IPC) provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. The Legal Action Center (LAC) provides technical assistance to immigration lawyers across the country and engages in impact litigation, including appearing as *amicus curiae* before administrative tribunals and federal courts in significant immigration cases on targeted legal issues.

a. *Disclosure of the Information is in the Public Interest*

DHS considers four factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the subject of the request concerns the 'operations or activities of the government,'"
- (2) "Whether the disclosure 'is likely to contribute' to an understanding of government operations or activities,"

- (3) “Whether disclosure of the requested information will contribute to ‘public understanding’” as opposed to the individual understanding of the requestor or a narrow segment of interested persons; and
- (4) “Whether the disclosure is likely to contribute ‘significantly’ to public understanding of government operations or activities.”

For a request to be considered in the public interest, all four criteria must be satisfied. *Judicial Watch v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

The requested documents clearly concern identifiable “operations or activities” of the government. AIC seeks records related to the enforcement operations and activities of CBP, a government agency, near and at the U.S.-Mexico border.

The request satisfies the second criterion because disclosure is likely to contribute to a better understanding of government operations or activities related to immigration enforcement and border security, including DHS and CBP’s use of voluntary return in lieu of removal proceedings to effect the departure of unlawfully present noncitizens from the United States. AIC is not aware of any documents providing information responsive to this FOIA request. Because this information is not already in the public domain, its release will significantly increase understanding of DHS and CBP’s enforcement practices.

Disclosure of the requested information also will contribute to “public understanding,” as opposed to understanding of a narrow segment of interested persons. Release of this information to AIC will significantly advance the general public’s understanding of CBP’s enforcement operations and activities. It is likely that a proper search in response to this request will reveal a large volume of responsive information. AIC has the capacity, legal expertise, and intention to review, analyze, and synthesize this information and make it accessible to a broad public audience. AIC plans to draft and disseminate a summary report of this information on our website, which contains immigration-related information and news and is accessible by any member of the public. AIC’s website receives more than 58,000 monthly visitors, and information available on the website is shared and re-posted on other websites with large audiences, including Alternet, a website with 2.3 million monthly visitors. AIC also will circulate a summary of the information in the LAC newsletter, which is directly distributed to 12,000 recipients and available to the public on the AIC website. Finally, AIC will share this information with our extensive contacts in the national print and news media.

The request satisfies the last criterion because disclosure of the requested information will contribute significantly to public understanding about CBP’s enforcement practices in general and the agency’s use of voluntary return in particular. This information will be particularly helpful to immigration attorneys who represent noncitizens who may be subject to stops, arrests, detention and/or questioning by CBP agents, the noncitizens themselves, nonprofit organizations interested in civil and/or human rights, and other members of the public who are concerned with immigration agency proceedings and policies.

b. *Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requestor.*

DHS considers two factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the requester has a commercial interest that would be furthered by the requested disclosure," and
- (2) "Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure," thereby rendering the disclosure "primarily in the commercial interest of the requester."

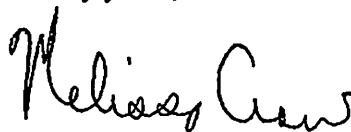
AIC is a 501(c)(3), tax-exempt, not-for-profit educational and charitable organization. AIC seeks the requested information for the purpose of disseminating it to the general public and not for the purpose of commercial gain. Like all other reports and information available on the AIC website, information about CBP's enforcement practices received in response to this FOIA request will be available to immigration attorneys, noncitizens and other interested members of the public free of charge.

Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). If you deny the fee waiver request, we respectfully ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your timely response to this request. If you have any questions, please feel free to contact me at (202) 507-7523 or by e-mail at mcrow@immcouncil.org.

Sincerely yours,



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